

Amendment No. 1 to SB1228

**Cooper J
Signature of Sponsor**

AMEND SB 1228

HB 1309

FILED

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Time _____

Clerk _____

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by deleting SECTIONS 1 - 6 of the printed bill in their entirety and by substituting
instead the following:

SECTION 1. Tennessee Code Annotated, Section 66-29-104(3), is amended by
adding the following as a new subdivision (3)(C):

(C) Notwithstanding any provision of this part to the contrary, any
outstanding check, draft, credit balance, customer's overpayment or unidentified
remittance issued to a business entity or association as part of a commercial
transaction in the ordinary course of a holder's business shall not be presumed
abandoned if the holder and such business entity or association have an ongoing
business relationship. An ongoing business relationship shall be deemed to exist
if the holder has engaged in a commercial, businesses or professional
transaction involving the sale, lease, license, or purchase of goods or services
with the business entity or association or a predecessor-in-interest of the
business entity or association within the dormancy period immediately following
the date of the check, draft, credit balance, customer's overpayment, or
unidentified remittance giving rise to the unclaimed property interest. As used
herein "dormancy period" means the period during which the holder may hold the
property interest before it is presumed to be abandoned. A transaction between
the holder and a third party insuror of another is a commercial transaction which
constitutes a business relationship between the holder and the insuror. A

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predecessor-in-interest is a person or entity whose interest in a business entity or association was acquired by its successor-in-interest, whether by purchase of the business ownership interest, purchase of business assets, statutory merger or consolidation and includes successive acquisitions by whatever means accomplished.

SECTION 2. Tennessee Code Annotated, Section 66-29-113(e), is amended by deleting from the first sentence thereof the words and figures "Not more than one hundred twenty (120) days" and by substituting instead the words and figures "Not more than one hundred twenty (120) days or less than sixty (60) days".

SECTION 3. Tennessee Code Annotated, Section 66-29-113(f), is amended by adding the following new sentence at the end thereof:

The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e).

SECTION 4. Tennessee Code Annotated, Section 66-29-118, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b).

(b) An action or proceeding may not be maintained by the treasurer to enforce this part in regard to the reporting, delivery, or payment of property more than ten (10) years after the holder either files a report for the period in which the property was reportable or gave express notice to the treasurer of a dispute

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regarding the property. Notwithstanding this subsection, the period of limitation shall be tolled under the following circumstances:

- (1) the holder failed to file such a report or other express notice with the treasurer;
- (2) the holder failed or refused to allow the treasurer to examine the holder's books and records pursuant to § 66-29-127;
- (3) the treasurer or an agent of the treasurer has initiated an audit of the report; or
- (4) the report was fraudulent.

SECTION 5. Tennessee Code Annotated, Section 66-29-125 is amended by designating the existing language as subsection (a) and adding the following language as a new subsection (b):

(b) (1) Any person who has been determined by the treasurer to be the holder of abandoned property which the treasurer asserts should have been paid or delivered to the treasurer pursuant to this part may file a complaint challenging such determination in the chancery court for Davidson County, naming the treasurer as the defendant and asking the court for a determination of whether the treasurer's determination is valid and correct. The suit must be brought within six (6) months from the date the treasurer issued to the holder a final determination of the amount owed and demand for payment. A copy of the

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complaint shall also be served on the attorney general and reporter. The suit shall be tried without a jury. Either aggrieved party may appeal to the court of appeals.

(2) As a condition precedent to the maintenance of any such suit, the person shall either:

(A). Pay to the treasurer at the time of the person's suit the amount determined by the treasurer to be owed, including any penalties assessed under § 66-29-129; or

(B) File with the court at the time of the person's suit a corporate surety bond or an irrevocable letter of credit issued by a qualified surety company or bank in a principal amount equal to one hundred fifty percent (150%) of the amount demanded or portion thereof which is challenged by the suit. Any unchallenged amount shall be paid to the treasurer in the manner prescribed in this part. The bond or letter of credit shall be in such form as shall be prescribed by regulations promulgated by the treasurer. For purposes of this subdivision, a corporate surety bond company or bank shall be qualified if it meets the requirements of § 67-1-1801(c)(2)(B).

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(3) In the event the suit is withdrawn or dismissed, or final judgment thereon is rendered in favor of the treasurer as to all of the challenged amount:

(A) The treasurer shall be entitled to retain the amount paid pursuant to subdivision (2)(A) above and the court shall order the person who filed the suit to pay to the state reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the challenged amount; or

(B) If the person filed a corporate surety bond or a letter of credit pursuant to subdivision (2)(B) above, the treasurer shall be entitled to collect the challenged amount and any penalty assessed against the person by enforcement of the bond or the letter of credit. In addition, the court shall order the person who filed the suit to pay to the state such interest as the court may determine proper in accordance with the principles of equity at a rate not in excess of the legal rate as provided in § 47-14-121. The court shall also order such person to pay to the state reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the challenged amount.

(4) In the event final judgment is rendered declaring that the treasurer's determination is invalid in whole, the court shall require the treasurer to:

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(A) Refund to the person any amount paid pursuant to subdivision (2)(A) above together with such interest as the court may determine proper in accordance with the principles of equity at a rate not in excess of the legal rate as provided in § 47-14-121 and reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the challenged amount; or

(B) If the person filed a corporate surety bond or a letter of credit pursuant to subdivision (2)(B), the court shall order the treasurer to pay to the person reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the challenged amount.

(5) If the court declares that the treasurer's determination is valid in part, the court shall require each party to bear its own attorneys' fees and expenses and to further require:

(A) The treasurer to refund to the person such part of the property paid pursuant to subdivision (2)(A) above as the court declared to be invalid together with such interest as the court may determine proper in accordance with the principles of equity at a rate not in excess of the legal rate as provided in § 47-14-121. The treasurer shall be entitled to retain the remaining amount; or

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(B) If the person filed a corporate surety bond or a letter of credit pursuant to subdivision (2)(B) above, the treasurer shall be entitled to collect the amount owed and any penalty assessed thereon against the person by enforcement of the bond or the letter of credit. In addition, the court shall order the person who filed the suit to pay to the state such interest as the court may determine proper in accordance with the principles of equity at a rate not in excess of the legal rate as provided in § 47-14-121.

SECTION 6. Tennessee Code Annotated, Section 66-29-129(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b)(1) Should the treasurer find that any person has failed to pay or deliver abandoned property to the treasurer as required under this part, the treasurer shall order such person to pay to the treasurer a civil penalty equal to ten percent (10%) of the value of the property for each year the property is not paid or delivered; provided, that the amount of such civil penalty shall not exceed twenty-five percent (25%) of the value of such property or fifty thousand dollars (\$50,000) whichever is less. This civil penalty shall not apply to inadvertent omissions to pay or deliver all property reportable during a given year. For purposes of this subdivision, an "inadvertent omission" means the failure to pay

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or deliver property having a value of less than ten percent (10%) of the total value of the property reportable during that year.

(2) Notwithstanding the provisions of subdivision (b)(1) to the contrary, if the property was identified or collected through a third party agent pursuant to §66-29-134, the civil penalty shall equal the greater of that provided for in subdivision (b)(1) or the amount of the fees paid by the state to the third party agent for identifying or collecting such property.

SECTION 7. Tennessee Code Annotated, Section 66-29-129(c), is amended by adding the following new sentences at the end thereof: The civil penalties provided for under this section shall not be assessed against any person who has failed to render any report or perform other duties required under this part if such person voluntarily performs or otherwise voluntarily complies with all the duties required under this part on or before May 1, 2002. At the sole discretion of the treasurer, this time period may be extended to May 1, 2003.

SECTION 8. Tennessee Code Annotated, Section 66-29-135, is amended by adding the following as a new subsection (b) and by redesignating the subsequent subsections accordingly:

(b) Notwithstanding subsection (a) to the contrary, if a gift certificate issued after December 31, 1996 is redeemable for merchandise only, then the

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amount presumed abandoned is sixty percent (60%) of the price paid by the purchaser for the certificate.

SECTION 9. Sections 2 and 3 of this act shall take effect on July 1, 2001 and shall cover all property reportable after said date, the public welfare requiring it. All other Sections of this act shall take effect upon becoming a law, the public welfare requiring it.